

California Institution for Men

MEMORANDUM

MIEH175L



APPEAL RESPONSE LEVEL: SECOND LEVEL

DATE: NOVEMBER 30, 2007

TO: LAMADRID

CDC#: P98764

APPEAL LOG #: CIM-E-07-1665

APPEAL RESPONSE:

All appeal documents, your Unit Health Record (UHR), and applicable sections of the California Code of Regulations (CCR) Title 15, have been reviewed and considered.

While you were incarcerated at RJD, you submitted an appeal containing multiple issues. You requested to get all your allergy medications and psych medications. You requested to get cleared or get told why you're on medical hold. Additionally, you stated you have problems with your right index finger and lower back.

Your request was partially granted. You were informed that it is standard practice to prescribe medications up to 90 days so that a re-evaluation may be done. You were informed no medical hold was in effect. You were informed pain medication had been prescribed on 7-11-07.

You were dissatisfied and progressed to the Formal Level. You stated your right index finger is still broken. You stated the skin medication is wrong. You stated your psych meds are not right. You stated you need glasses.

Your appeal was partially granted. By this time you had been transferred to CIM, where you had been evaluated by the Mental Health Department and a medication plan was being developed. You had been seen by optometry prior to leaving RJD. You were informed a facility provider at CIM would see you regarding the rash and broken finger.

You progressed to the 2nd Level, stating the treatment plan for your mental issues need much improvement. You stated you need monitoring of Hep C. You stated you want all the items taken care of this year, but you don't see appointments coming.

Your movement history indicates you arrived at CIM on 9-29-07. Since that time, you have been seen multiple times for psychological evaluations, medical evaluations, and specialty evaluations as follows:

Psych evaluations were conducted on 9-15-07, 9-29-07, 10-18-07, 11-3-07, and 11-8-07. Medical evaluations were conducted on 9-21-07, 9-24-07, 10-9-07, 10-22-07, and 11-9-07. You were seen by specialty providers on 10-15-07, 10-29-07, and 11-27-07. As a participant in the Chronic Care Program (CCP), you are seen on a

Page 2
CIM-E-07-1665

monthly basis for evaluation with your primary care physician. Your most recent examination was done on 11-9-07, at which time allergy meds and instructions regarding the medication were given (no rash was evident upon examination). Pain meds were also prescribed. No recommendations were made regarding treatment for your right index finger.

On 11-29-07, you were interviewed regarding your appeal issues. You stated to the interviewer that your primary complaint is the problem with your right index finger. You stated you have limited mobility and pain due to incorrect healing.

The Chief Physician & Surgeon reviewed your case. It has been determined that a referral to orthopedics will be submitted for evaluation of the old fracture on the right index finger. The specialist will evaluate for surgical correction. Please be advised once the referral is submitted, approved, and processed, it will take several weeks before your appointment is scheduled. You will be scheduled as soon as possible and ducated to attend.

The CIM Medical Department is concerned for your health and well-being, and has acted appropriately in providing care and treatment. Your treating physician will continue to see you on a monthly basis and will address your medical issues as needed.

Pursuant to the following CCR, Title 15 sections, your medical needs have been handled in the appropriate manner.

3350 Provision of Medical Care and Definitions

(a) The department shall only provide medical services for inmates which are based on medical necessity and supported by outcome data as effective medical care. In the absence of available outcome data for a specific case, treatment will be based on the judgment of the physician that the treatment is considered effective for the purpose intended and is supported by diagnostic information and consultations with appropriate specialists. Treatments for conditions which might otherwise be excluded may be allowed pursuant to section 3350.1(d).

(b) For the purposes of this article, the following definitions apply:

(1) Medically Necessary means health care services that are determined by the attending physician to be reasonable and necessary to protect life, prevent significant illness or disability, or alleviate severe pain, and are supported by health outcome data as being effective medical care.

(2) Outcome Study means the definition, collection and analysis of comparable data, based on variations in treatment, concerning patient health assessment for purposes of improving outcomes and identifying cost-effective alternatives.

(3) Outcome Data mean statistics such as diagnoses, procedures, discharge status, length of hospital stay, morbidity and mortality of patients, that are collected and evaluated using science-based methodologies and expert clinical judgment for purposes of outcome studies.

(4) Severe pain means a degree of discomfort that significantly disables the patient from reasonable independent function.

(5) Significant illness and disability means any medical condition that causes or may cause if left untreated a severe limitation of function or ability to perform the daily activities of life or that may cause premature death.

CCR 3354. Health Care Responsibilities and Limitations

(a) Authorized Staff. Only facility employed medical staff, contractors paid to perform medical services for the facility, or persons employed by the facility as medical consultants shall be permitted to diagnose illness, prescribe medication and medical treatment for inmates. No other personnel are authorized to do so.

APPEAL DECISION: PARTIALLY GRANTED

Your appeal documents are attached.

Sabry F. Ghaly MD
11/30/07

S. Ghaly, MD
Chief Physician and Surgeon (A)
California Institution for Men

M. Farooq MD
11/30

M. Farooq, MD
Chief Medical Officer/Health Care Mgr. (A)
California Institution for Men

INMATE/PAROLEE APPEAL FORM

CDC 602 (12/87)

JUL 18 2007

Location: Institution/Parole Region

Log No.

Category

 1. RJD
 2. Cim-E

 1. 07-2280
 2. 07-1665

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and hearing representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and ~~not more than one additional page of comments~~ to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

MIEH 175L

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
LAMARIS	98764	NA	EH 20-126L

A. Describe Problem: DIFFICULTY IN WRITING PRIMARY LANGUAGE NOT ENGLISH. DOCTOR SAID TO ME CAN'T GIVE PRESCRIPTION FOR ALLERGIES FOR OVER 30 DAYS. PUT IN TO SEE DR. AFTER MEDICATION ENDS. SO THIS IS A 3084.5(Q)(3)(D)(F)(H). I, 42 U.S.C. § 12102. MY ALLERGIES COMBINED WITH WRONG PSYCH MEDICATIONS OR LEVELS THEREOF COMPOUND WITH HEAT FLARE UP ALL MY ALLERGIES. THIS IS SOMETHING WITH MORE THAN 10 YEARS IN MEDICAL C-FILE AS EVIDENCE, AND I HAVE SEEN DR. FOR LATELY. ABOVE IS ONE MEDICAL PROBLEM THAT WILL HOLD ME BEFORE CLASSIFICATION, IN MY EYES. VERY LIMITED MOBILITY OF (R) INDEX FINGER WITH SEVER PAIN NOW.

If you need more space, attach one additional sheet.

B. Action Requested: TO GET ALL MY ALLERGY MEDICATIONS TILL 3-10-08 FOR SKIN, NASAL AND LUNG PROBLEMS. TO GET CLEARED OR TOLD WHY ON MEDICAL HOLD, AND TAKE CARE OF THESE PROBLEMS. ALSO RIGHT INDEX FINGER AND PROBLEMS OF LOWER BACK. YOU HAVE MY HISTORY. PSYCH MEDICATIONS.

Inmate/Parolee Signature: Miguel Lamarr Date Submitted: 7-16-07

C. INFORMAL LEVEL (Date Received: JUL 26 2007), PARTIALLY GRANTED

Staff Response: MEDICATION, AS STANDARD PRACTICE IS PRESCRIBED FOR NORMALLY UP TO 90 DAYS SO THAT THE FACILITY PROVIDER CAN EVALUATE SYMPTOMS AND RE-EVALUATE AS NECESSARY. YOUR UNIT HEALTH RECORD DOES NOT REFLECT A MEDICAL HOLD. YOU WERE PRESCRIBED PAIN MEDICATION 7/11/07

Staff Signature: John Rivera Date Returned to Inmate: 7/30/07

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

By X-RAY ON 8-9-07 (R) INDEX FINGER STILL BROKEN, PER MEDICAL SCREENING ON 8-2-07 WRONG STD MEDICATION TRIAMCINOLONE ACETONIDE CREAM. 1% IS CORRECT. PER OPTOMOLOGIST TEST EYE VISION WORST THAN 20/200 NEED GLASSES. ALSO PSYCH MEDS STILL NOT RIGHT IS PRESCRIPE CORRECTLY OUTSIDE AFTER PAIN TEST AND STAYS IN HOSPITAL

Signature: Miguel Lamarr Date Submitted: 8/13/07

Note: Property Funds appeals must be accompanied by a completed

Board of Control form BC-1E, Inmate Claim

per 8-2-07 MEDICAL SCREENING CIM FIX! CDC Appeal Number:

NOV 07 2007
2nd level
Cmo

07-2280

INMATE APPEAL ROUTE SLIP

To: MED

Date: September 13, 2007

From: INMATE APPEALS OFFICE

Re: Appeal Log Number RJD-4-07-02280 By Inmate LAMADRID, P98764

Please assign this appeal to appropriate staff for FIRST level response.

Appeal Issue: MEDICAL

Due Date: 10/26/2007

Special Needs:

STAFF INSTRUCTIONS: Per Director's Rule 3084.5(f) (2) first level appeal review requires a personal interview with the inmate unless the appeal is granted. This policy is not within the institution's jurisdiction and cannot be waived. Director's Rule 3084.5(f) (3) provides that a telephonic interview may be conducted if the inmate is not available in person.

Begin response with GRANTED, DENIED, PARTIALLY GRANTED or WITHDRAWN. When complete, return appeal to the Appeals Office. All first level appeals require signature of the Division Head. Appeals that are incomplete will be returned for appropriate completion.

Refer to D.O.M. 54100 for instructions.

Inmate Appeals Coordinator
Richard J. Donovan Correctional Facility



State of California

CDC FORM 695

Screening For:

CDC 602 Inmate/Parolee Appeals

CDC 1824 Reasonable Modification or Accommodation Request

RE: Screening at the FIRST Level

August 23, 2007

LAMADRID, P98764

F42000000000126L



Log Number: RJD-4-

(Note: Log numbers are not assigned to screen out appeals, or informal level appeals)

The enclosed documents are being returned to you for the following reasons:

SEPARATE YOU ISSUES AND SUBMIT ONE ISSUE PER 602.

*SIMPLE: EVERYTHING IS IN MEDICAL
SCREENING ON 8-2-07
FIX IT & RIGHT ARM*

Appeals Coordinator

Richard J. Donovan Correctional Facility

NOTE: Failure to follow instruction(s) will be viewed as non-cooperation and your appeal will be automatically dismissed pursuant to CCR 3084.4(d). This screening decision may not be appealed. If you believe this screen out is in error, please return this form to the Appeals Coordinator with an explanation of why you believe it to be in error, and supporting documents. You have only 15 days to comply with the above directives.

PERMANENT APPEAL ATTACHMENT – DO NOT REMOVE

State of California

CDC FORM 695

Screening For:

CDC 602 Inmate/Parolee Appeals

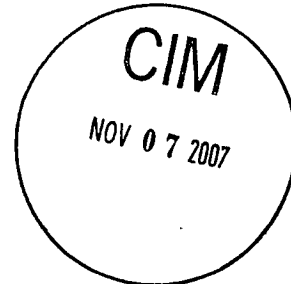
CDC 1824 Reasonable Modification or Accommodation Request

RE: Screening at the FIRST Level

July 18, 2007

LAMADRID, P98764

F42000000000126L



Log Number: RJD-4-

(Note: Log numbers are not assigned to screen out appeals, or informal level appeals)

The enclosed documents are being returned to you for the following reasons:

You have not included evidence of an attempt to resolve the problem at the Informal Level. The Informal Level of Review is waived for appeals of classification actions; serious disciplinarys; CSR actions; departmental regulations, policies or operational procedures; staff complaints; and exceptional circumstances as defined in CCR 3084.7. Obtain an informal response by sending your appeal directly to:

MEDICAL

Appeals Coordinator

Richard J. Donovan Correctional Facility

NOTE: Failure to follow instruction(s) will be viewed as non-cooperation and your appeal will be automatically dismissed pursuant to CCR 3084.4(d). This screening decision may not be appealed. If you believe this screen out is in error, please return this form to the Appeals Coordinator with an explanation of why you believe it to be in error, and supporting documents. You have only 15 days to comply with the above directives.

PERMANENT APPEAL ATTACHMENT – DO NOT REMOVE

HABEAS

U.S. District Court
Southern District of California (San Diego)
CIVIL DOCKET FOR CASE #: 3:07-cv-01997-JM-JMA
Internal Use Only

Lamadrid v. Hernandez
Assigned to: Judge Jeffrey T. Miller
Referred to: Magistrate Judge Jan M. Adler
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 10/15/2007
Jury Demand: None
Nature of Suit: 530 Habeas Corpus
(General)
Jurisdiction: Federal Question

Petitioner**Diego H Lamadrid**

represented by **Diego H Lamadrid**
P-98764
PO Box 500
Chino, CA 91708
PRO SE

V.

Respondent**R J Hernandez**
Warden

represented by **Attorney General**
State of California
Office of the Attorney General
110 West A Street
Suite 1100
San Diego, CA 92101-5266
(619)645-2076
Fax: (619)645-2313
Email: docketingsdawt@doj.ca.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
10/15/2007	<u>1</u>	PETITION for Writ of Habeas Corpus (Filing fee \$ 0. Not paid, motion for IFP submitted), filed by Diego H Lamadrid.(rxm) (Entered: 10/16/2007)
10/15/2007	<u>2</u>	MOTION for Leave to Proceed in forma pauperis by Diego H Lamadrid. (rxm) (Entered: 10/16/2007)
10/15/2007	<u>3</u>	MOTION to Appoint Counsel by Diego H Lamadrid. (rxm) (Entered: 10/16/2007)
10/15/2007	<u>4</u>	NOTICE of Change of Address by Diego H Lamadrid. (rxm) (Entered: 10/16/2007)

	10/16/2007)
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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 DIEGO H. LAMADRID,

12 Petitioner,

13 v.

14 R. J. HERNANDEZ, Warden,

15 Respondent.
16
17

Civil No. 07-1997 JM (JMA)

ORDER:

**(1) GRANTING APPLICATION
TO PROCEED IN FORMA
PAUPERIS AND,**

**(2) DISMISSING PETITION
WITHOUT PREJUDICE**

18 Petitioner, a state prisoner proceeding pro se, has submitted a Petition for Writ of
19 Habeas Corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma
20 pauperis.

21 **REQUEST TO PROCEED IN FORMA PAUPERIS**

22 Petitioner has no funds on account at the California correctional institution in
23 which he is presently confined. Petitioner cannot afford the \$5.00 filing fee. Thus, the
24 Court **GRANTS** Petitioner's application to proceed in forma pauperis. The Clerk of the
25 Court shall file the Petition for Writ of Habeas Corpus without prepayment of the filing
26 fee.

27 ///

28 ///

1 FAILURE TO ALLEGE EXHAUSTION OF STATE JUDICIAL REMEDIES

2 However, the petition must be dismissed because Petitioner has failed to allege
3 exhaustion of state judicial remedies. Habeas petitioners who wish to challenge either
4 their state court conviction or the length of their confinement in state prison, must first
5 exhaust state judicial remedies. 28 U.S.C. § 2254(b), (c); Granberry v. Greer, 481 U.S.
6 129, 133-34 (1987). To exhaust state judicial remedies, a California state prisoner must
7 present the California Supreme Court with a fair opportunity to rule on the merits of
8 every issue raised in his or her federal habeas petition. 28 U.S.C. § 2254(b), (c);
9 Granberry, 481 U.S. at 133-34. Moreover, to properly exhaust state court remedies a
10 petitioner must allege, in state court, how one or more of his or her federal rights have
11 been violated. The Supreme Court in Duncan v. Henry, 513 U.S. 364 (1995) reasoned:
12 “If state courts are to be given the opportunity to correct alleged violations of prisoners’
13 federal rights, they must surely be alerted to the fact that the prisoners are asserting
14 claims under the United States Constitution.” Id. at 365-66 (emphasis added). For
15 example, “[i]f a habeas petitioner wishes to claim that an evidentiary ruling at a state
16 court trial denied him [or her] the due process of law guaranteed by the Fourteenth
17 Amendment, he [or she] must say so, not only in federal court, but in state court.” Id. at
18 366 (emphasis added).

19 Nowhere on the Petition does Petitioner allege that he raised his claims in the
20 California Supreme Court. In fact, he specifically indicates he did not seek review in the
21 California Supreme Court. (See Pet. at 6-9b.) If Petitioner has raised his claims in the
22 California Supreme Court he must so specify. “The burden of proving that a claim has
23 been exhausted lies with the petitioner.” Matthews v. Evatt, 105 F.3d 907, 911 (4th Cir.
24 1997); see Breard v. Pruett, 134 F.3d 615, 619 (4th Cir. 1998); Lambert v. Blackwell,
25 134 F.3d 506, 513 (3d Cir. 1997); Oyler v. Allenbrand, 23 F.3d 292, 300 (10th Cir.
26 1994); Rust v. Zent, 17 F.3d 155, 160 (6th Cir. 1994).

27 Further, the Court cautions Petitioner that under the Antiterrorism and Effective
28 Death Penalty Act of 1996 (AEDPA) a one-year period of limitation shall apply to a

1 petition for a writ of habeas corpus by a person in custody pursuant to the judgment of
2 a State court. The limitation period shall run from the latest of:

3 (A) the date on which the judgment became final by the
4 conclusion of direct review or the expiration of the time for
seeking such review;

5 (B) the date on which the impediment to filing an
6 application created by State action in violation of the
Constitution or laws of the United States is removed, if the
7 applicant was prevented from filing by such State action;

8 (C) the date on which the constitutional right asserted
was initially recognized by the Supreme Court, if the right has
9 been newly recognized by the Supreme Court and made
retroactively applicable to cases on collateral review; or

10 (D) the date on which the factual predicate of the claim
11 or claims presented could have been discovered through the
exercise of due diligence.

12 28 U.S.C.A. § 2244(d)(1)(A)-(D) (West Supp. 2002).

13 The statute of limitations does not run while a properly filed state habeas corpus
14 petition is pending. 28 U.S.C. § 2244(d)(2); see Nino v. Galaza, 183 F.3d 1003, 1006
15 (9th Cir. 1999). But see Artuz v. Bennett, 531 U.S. 4, 8 (2000) (holding that “an
16 application is ‘properly filed’ when its delivery and acceptance [by the appropriate court
17 officer for placement into the record] are in compliance with the applicable laws and rules
18 governing filings.”). However, absent some other basis for tolling, the statute of
19 limitations does run while a federal habeas petition is pending. Duncan v. Walker, 533
20 U.S. 167, 181-82 (2001).

21 Rule 4 of the Rules Governing Section 2254 Cases provides for summary dismissal
22 of a habeas petition “[i]f it plainly appears from the face of the petition and any exhibits
23 annexed to it that the petitioner is not entitled to relief in the district court . . .” Rule 4,
24 28 U.S.C. foll. § 2254. Here, it appears plain from the Petition that Petitioner is not
25 presently entitled to federal habeas relief because he has not alleged exhaustion of state
26 court remedies.

27 ///

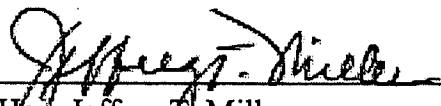
28 ///

1 **CONCLUSION**

2 Based on the foregoing, the Court **GRANTS** the application to proceed in forma
3 pauperis and **DISMISSES** the Petition without prejudice and with leave to amend. In
4 order to have this case reopened, Petitioner must file a First Amended Petition, curing the
5 pleading deficiencies discussed above, no later than **December 17, 2007**. For Petitioner's
6 convenience, the Clerk of Court shall attach a blank First Amended Petition form to this
7 Order.

8 **IT IS SO ORDERED.**

9 DATED: October 24, 2007

10 
11 Hon. Jeffrey T. Miller
United States District Judge

Other Orders/Judgments

3:07-cv-01997-JM-JMA Lamadrid v. Hernandez

U.S. District Court

Southern District of California

Notice of Electronic Filing

The following transaction was entered on 10/25/2007 at 10:52 AM PDT and filed on 10/24/2007

Case Name: Lamadrid v. Hernandez

Case Number: 3:07-cv-1997

Filer:

WARNING: CASE CLOSED on 10/24/2007

Document Number: 5

Docket Text:

ORDER granting Application to proceed in forma pauperis and dismissing Petition without prejudice and with leave to amend. To have case reopened, Petitioner must file a First Amended Petition no later than 12/17/07. (Blank First Amended Petition mailed to Petitioner). Signed by Judge Jeffrey T. Miller on 10/24/07. (jpp)

3:07-cv-1997 Notice has been electronically mailed to:

Attorney General docketingsdwt@doj.ca.gov

3:07-cv-1997 Notice has been delivered by other means to:

Diego H Lamadrid
P-98764
PO Box 500
Chino, CA 91708

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1106146653 [Date=10/25/2007] [FileNumber=2238307-0] [5bb25ba1f86915ccb3654e6c01474aea024133110327d424e7645552b6764baa81004ba84c296f1b502faf745a40b2e0a2519da6c0af76ddca29a751e598ab26]]

MC-275

Name LA MADRID , DIEGO H.Address CDC#:P-98764 ELM HALL 175P.O. BOX 500CHINO , CA 91708CDC or ID Number P-98764FOURTH DISTRICT COURT OF APPEAL

(Court)

PETITION FOR WRIT OF HABEAS CORPUS

LA MADRID , DIEGO H.

Petitioner

vs.

DIRECTOR OF THE CA. DEPT' OF CORRECTION

Respondent

No. _____

(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rule 60 of the California Rules of Court [as amended effective January 1, 2005]. Subsequent amendments to Rule 60 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

Page one of six

**Court of Appeal
State of California
Second Appellate District**

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Court of Appeal Case Number: _____

Case Name: _____

Please check the applicable box:

☐ There are no interested entities or parties to list in this Certificate per California Rules of Court, Rule 8.208(d)(3).

☐ Interested entities or parties are listed below:

Name of Interested Entity or Person	Nature of Interest
1. LA MADRID , DIEGO H.	
2.	
3.	
4.	

Please attach additional sheets with Entity or Person Information if necessary.

Signature of Attorney/Party Submitting Form

Printed Name:

Address:

State Bar No:

Party Represented:

SUBMIT PROOF OF SERVICE ON ALL PARTIES WITH YOUR CERTIFICATE

This petition concerns:

- ☐ A conviction
 ☒ Parole
☐ A sentence
 ☒ Credits
☒ Jail or prison conditions
 ☒ Prison discipline
☒ Other (specify): _____

1. Your name: DIEGO HENRY LA MDRID2. Where are you incarcerated? CIM3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

PETTY THEFT WITH A PRIORb. Penal or other code sections: NOW P.C. 3057c. Name and location of sentencing or committing court: SENTENCED IN S.D. //NOW PAROLE VIOLITIONRJ.DONOVAN (BPH) 480 ALTA RD. ,S.D. ,CA. 92179d. Case number: CDC#: P-98764e. Date convicted or committed: 3/14/07f. Date sentenced: 4/12/07g. Length of sentence: 12MONTH P.C.3057(d)(2)(e)h. When do you expect to be released? 3/13/08 is E.P.R.D.i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address:William Hobson : Pacific Rim Point 9335 Airway Rd. , St 213 ; S.D. , Ca. 92154

4. What was the LAST plea you entered? (check one)

☒ Not guilty ☐ Guilty ☐ Nolo Contendere ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

☐ Jury ☐ Judge without a jury ☒ Submitted on transcript ☐ Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

Parolee must be discharged early from parole after completion of certain period of parole (without revocation or suspensions) if all requirements D.O.M. 81080-81080.1.1 Unless B.P.T.(H) finds "some evidence" good reason to retain. The some reason in this case can not be "dicriminatory" if so it then being an A.D.A. issue. MY ongoing mental heath will never go away yet on my disability I am denied services, progam, activities. P.C. 3001 early discharge after 13 mo.

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: *who* did exactly *what* to violate your rights at what time (*when*) or place (*where*). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

Was in long term rehab (from the V.A.) A.D.T.P., Way Back, Bayview hospital, or in the V.A. hospital itself during the whole time incomplice with all rules and regulations of 15CCR & D.O.M.. (All this evidence can be supeana including medical recomendations that kept me in these places)

To take care of myself I use V.A.. Medi-cal do not use anything from parole to assist me in transition to the community have been independant of all parole services.

For many month (7) kept asking parole of the reason in writting to no avail at this point it would be futile to continue to get these papers. Every month I would ask my parole officer. For the first few month after the 13th mo. I would ask for the reason in writting. At first I did not have a parole officer. Later the answer would be that the parole officer that retained me would have to do it. At one point an officer of the day O.D. that was my parole officer at one point told me verbally " because I was in the hospital was the reason I was retained. This being then a violation of my fundamental right to appeal (can not appeal if I don't have in writting). A practice that is on-going & that keeps recurring-capable of repetition that violate aspects of fairness, yet evade reveiw. A practice being employed by CDC when dealing with people with disabilities. This issue is important controversial, recurring, and one that is not likely to be reached by ordinary judicial process (documents on parolee's after 13th mo. with disabilities then asked if they received there reason will confirm this)

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

A.D.A., P.C. 3001, 3000, Civil Rights , In re Fleury (1967) 67 Cal.2d 600; In re Garcia (1998) 67 Cal.App.4th 841 ; In re Angel M. (1998) 58 Cal. App.4th 1498; People v. Superior Court (Hamilton) (1991) 230 Cal.App.3d 1592; In re Arias (1986) 42 Cal.3d 667, 673; In re Robin M. (1978) 21 Cal.3d 337, 341, n.6; In re William M. (1970) 3 Cal.3d 16; In re Strick (1983) 148 Cal.App. 3d 906, 911; In re Muszalski (1975) 52 Cal.app3d 500; Ogo Associates v. City of Torrance (1974) 52 Cal.App.3d 830, 834; In re Harris (1993) 5 Cal. 4th 813; Preiser v. Rodriguez 411 U.S. 475

Ground 2 or Ground _____ (if applicable):

Jurisdiction the incident in question happened in Mexico. I have plenty of witnesses for this case. To list a few 4 times the police was called in this matter, priest, council city members, intake doctor at the psychiatric hospital, neighbors, businessess, and our room-mate that was not present to testify. Combined with perjured testimony that attorney would not lock in. His only defence being jurisdiction.

a. Supporting facts:

All relevant facts of my defence are in the recording that BPT[H] has of this hearing. This hearing started with a Maarsden Hearing because of my differences with my attorney of record W. Hobson. Tried to contact him many times after that to no avail. 1) Gave him an appeal on the matter. 2) Tried to get help with an appeal (got no answer) 3) Tried to contact by sending him an inmate request concerning procedure or advice in what to do. Have multiple appeals in these problems, but by the time the last level of review is done I will have done most of this violation. The appeals started in April right after the decision.

Lack of jurisdiction over offence P.C. 1004, P.C. 647(d); people v. Webber. It has two elements personal and subject matter, and without subject is void. BPT abuse of jurisdiction in this case is principle issue to begin with. Cause in accusation I must be able to bring in evidence to defend myself. Most of it being in a foreign country, which I would need to make a proper defence of the charges against me. 14th Amendment constitutional rights combined with Supreme Court laws were violated. Add jurisdiction and ineffective assistance of counsel. Lack of help in appeal for a member of Federal cases "Colman, Armstrong, Gilmore, Rutherford make it a miscarriage of justice.

b. Supporting cases, rules, or other authority:

U.S. Const. Amendments 6, 8, 11, and 14th; 28 U.S.C. §1291; universal jurisdiction and protective principles; international law jurisdictional limits; U.S. v. Medjuck 156 F.3d 916 (9th Cir. 1998); In re Winship, 397 U.S. 358, 364 (1970); U.S. v. Jose Luis L., 978 F.2d 543, 545-46 (9th Cir. 1992); U.S. v. Pizzarusso, 388 F.2d 8, 10-11 (2d Cir. 1968); Hunter v. United Van Lines, 746 F.2d 635, 639 (9th Cir. 1984); U.S. v. Suerte, 291 F.3d 366, 375 (5th Cir. 2002); U.S. v. Bynum, 327 F.3d 986 (9th Cir.); U.S. v. Perez-Oviedo, 281 F.3d 400, 403 (3d Cir. 2002); LSO, Ltd. v. Stroh, 205 F.3d 1146, 1152 (9th Cir. 2000); People v. Superior Court (Caswell) (1998) 46 C3d 381, 250 CR 515 (Const. challenge to P.C. §647; Lack of jurisdiction P.C. 1004; People v. Webber (1901) 133 C.623, 66 P. 38.

7. Ground 2 or Ground _____ (if applicable):

I.A.C. in parole revocation hearing by attorney. B.P.T. hearing started with a marsden hearing because of my problems and disagreements with my attorney.

a. Supporting facts:

I asked my attorey to get an extension so that he could get evidence that would be in my faror. His explanation was that they (BPT) had no jurisdiction in Mexico, which was his only defence of the case.

We disagreed in this cause I have a lot more evidence these being doctors, police,coucil-city members,preist,pastors,my/our roommate that we had for over 10 months,neighbors, the business that is across the sreet where the house is,the land lord which is "jefe de reglamientos in T.J. ",and many otherpeople that I could get. Most of them are in Mexico. But he supeana no one in my defence.

Recording of B.P.T. hearing will verify all this. Ido not have and it is needed to show proof of these facts.

First people that I spoke to INS where excused and they I told them what,why,where I was going and the reason. Also, theygave the property that has names addresses that would help in my defence; to this day I do not have them (have put in 6 appeals in this matter)

Iasked for extenssion attorney said no.

Commisioner would not let me represent myself (his voice in recording).

Asked attorney to ask questions to witnesses to lock in testimony he would not do this since his defence(jurisdiction) would be sufficient.

Gave my attorney an appeal that to thisday I do not know what happened to it .

An unforeseeable judicial enlargement of a criminal statute, applied retractively, violates the federal due process right to a fair warning of what contitutes criminal conduct.

b. Supporting cases, rules, or other authority:

U.S. v. Comito, supra,177F3dat p1170;People v. Arreola(1994)7Cal.4th1144,1159-1161; Morrissey v. Brewer,supra,408 U.S.;In re Carroll(1978) 80Cal.App. 3d22,34; Valdivia v. Schwarzeneggar,supra; 15CCR 2675,2676,2000(b)(40) and(44); White v. White (9thCir 1991) 925 F.2d287;In re Prewitt,supra ; In re Vickers, supra ;Goverment code 11185 ; U.S. Const. Aricle III ;U.S. Amendments 1,4,6,8,11,14 ; I.A.C.,A.D.A.;Trombetta 467 U.S. at485;Bouie v. City of Columbia, 378 U.S. 347,353 (1964);see also Rogers v. Tennessee,532 U.S. 451,459(200 Darnell v. Swinney, 823 F.2d 299,301(9th Cir. 1987)

Ground 2 or Ground _____ (if applicable):

Access to courts: denial of access to courts or assistance from an attorney after my parole hearing. Law is contained in books; without access to a law library to find constitutions, statutes, regulations, and their judicial interpretations, denied me of any meaningful legal work being restricted in R.J.D. in both 1 yard & 4 yard. This hindering my efforts to pursue my claim in a violation of parole cause my first claim denial.

a. Supporting facts:

Have 2 appeals in this matter of legal problems. Appeal log number: RJD-1-07-01141 that started in April right after the BPT[H] hearing from the 1 yard. In this yard I am completely on lock down with no access to any thing (have proof from request sent to law library response for information). Here I can not go anywhere. Only to the shower. We are feed in the cell since (we being EOP's) are in a building that house regular inmates and we are not classified, so rules have it that we can not mix at all nor could I get any information from the law library. This appeal was for some reason unknown called a duplicate by the CIM appeals coordinator. Even after I tried to explain to him that circumstances are different from a second appeal with log number RJD-4-07-01079. Which was put in later under different circumstances. The latter appeal is in the directors level which I have been waiting for a response. I was 1 week short of 6 month under these conditions, restricted from any meaningful access to law library materials or response as to where to get help. Appeals ask for help from any place that could/should help a person with a long history of mental illnesses, a member of Colman, Armstrong class action suits. Record will show that I was at the law library 5 times in 6 months. The effects vivid in that my appeal to superior court got denied on technicality. I even had to 602 the institution for my indigent envelopes a problem that continued until this day. They would say that up to 5 envelopes. This to an A.D.A. inmate.

b. Supporting cases, rules, or other authority:

U.S. Supreme court 1 Lewis v. Casey (1996) 518 U.S. 343; Bounds v. Smith (1977) 430 U.S. 817; Younger v. Gilmore (1972) 404 U.S. 15; Toussaint v. Mc Carty (9th Cir. 1986) 801 F.2d 1080; Linqest v. Idaho Board of corrections (9th Cir. 1985) 776 F.2d 851; Gilmore v. California (9th Cir. 2000) 220 F.3d 987; Sands v. Lewis (1996) 518 U.S. 343; Hargis v. Foster (9th Cir. 202) 312 F.3d 404; 15 CCRS 3165(d); Pa. Dept. of Corr. v. Yeskey (1998) 524 U.S. 206; Tennessee v. Lane (U.S. 2004) 72 U.S.L.W. 4371; AMERICAN DISABILITY ACT;

7. Ground 2 or Ground _____ (if applicable):

14th Amendment of the United States Constitution. Due process has to be given to parolee throughout the entier process/during every part of it. It must go amoung in between; in the midst.

a. Supporting facts:

The court looks first to the words of the statute in a attempt to ascertain legislative intente. Court must enforce the provision of the state Constitution and may not lightly disregarde a clear constitutional mandate. United States Supreme Court's determination of a Federal question, including the interpretation , is binding upon the state courts and must be followed, notwithstanding any state law,decision, or rule to the contary. Statutes inconsistent with the Constitution are void, and where possible courts will construe statutes in favor of their valdity. The appellate court must construe an enact-ment to preserve it's constitutional validity, and court presumes that the enactors understood the constitutional limits on their power and intended to respect those li-mits. It is not the judiciary's funtion to reweigh the legislative facts underlying a legislative enactment. Same standards for determining a whether a state is impliedly re-pealed by another statute apply whether in determining whether a constitutional amend-ment impliedly repealed a statutory provision.

In this case there is multiple violations of due process. 1)It started with the pa-
role unit in Chula Vista not giving me the opprtunity to appeal a decision of BPT. I
repeatedly ask to be given a written reason of why on parole; every monthly report I
would ask for the same thing to no avail. At this point it is futile to continue to
ask for it. 2) Marsden hearing to start my BPT hearing because of my differences with
my attorney in many aspects of the defence of the parole revocation. From witnesses ,
extencion of time to get evidence, my room-mate as witness, property held by P.O. offi-
cer that I still do not have (even after 7 different appeals in different areas). 3)
Conduct credits on parole revocation.

b. Supporting cases, rules, or other authority:

Grafton Partners L.P. v. Superior Court, 36 Cal.4th 944, 116 P.3d 479; State Personnel Bd.
v. Department of Personnel Admin., 36 CR 3d 142, 123 P.3d 169 (Cal. 2005); Ca. State Person-
nel Bd. v. Ca. State Employees Ass'n, 31 Cal. Rptr. 3d 201, 115 P.3d 506 (Cal. 2005); In re
Tobacco Cases II, 123 Cal. App. 4th 617; Slocum v. State Bd. of Equalization, 36 Cal. Rptr.
3d 627; Save Our Sunol, Inc. v. Mission Valley Rock Co., 21 Cal. Rptr. 3d 171 (Cal. app. 1st
Dist. 2004); Burkle v. Burkle, 37 Cal. Rptr. 3d 805 (Cal. app. 2d Dist. 2006); Barratt American,
Inc. v. City of San Diego, 117 Cal. App. 4th 809; 14th Amendment of U.S. const.;

7. Ground 2 or Ground _____ (if applicable):

Application of P.C. 3057 illegality of it. California Department of Corrections not giving me behavior/conduct credits afforded to me by 14th Amendment (due process).

a. Supporting facts:

Have appealed the exit of mine and CDC do not apply any conduct , behavior credits. My sentence even if legal violates due process cause it does not give me my credits that any other crime would be allowed. Granted no worktime credits be given but it do not say anything about not being able to earn conduct/behavior credits on a parole revocation. This is a practice that CDC is accotomed to doing to all prisoners that get a violaation of parole. P.C. 2900.5 deals with credit earning also, P.C. 4019; People v. Sage (1980) 26C3d 498,165 CR 280 all these conuct/behavior credits and all the appli-cations and places that these credits may be earned. Even credits may be earned for murder under P.C.\$667.7(a)(1) is eligible for credits under P.C. \$2931(a)-(c). A group/selected class of individuals is a ground for dismissal based on violation of the equal protections. [Murgia v. Municipal Court (1975) 15C3d 286, 290; 124 CR 204,206] ;Erroneous interpretation or applications of state law.

b. Supporting cases, rules, or other authority:

People v. Superior Court (Hartway) (1977) 19 C3d 388,349, 138CR 66,71; Discriminatory law enforcement.Yick Wo v Hopkins(1886)118 US 356,6 S Ct 1064,30 LEd 220,;Uniform crime Charging Manuel(2d ed 1983);CDAA, Uniform Crime Charging Standards(1974);P.C. 1385 ;Estelle v McGuire(1991) 502US ,112 S.Ct475;Engle v isaac (1982) 456US 107; Hinman v McCarthy(9th Cir 1982)676 F2d 343,349;Rushen v Spain(1983)464 US 114,120;14th Amend-ment of U.S.;P.C. 3057;In re Howard N.,35 Cal.4th 117,24 CR3d 866,106 P.3d(2005);

7. Ground 2 or Ground _____ (if applicable):

Restoration of prisoners good-conduct time credits.

a. Supporting facts:

Once restoration of good -conduct credits are given, time should be taken from the end of parole period.

Issues of great importance, likely to recur, and may evade appellate review. (See Smith v. Board of Supervisors (1989) 216 Cal. App.3d 862,868

"The fundamental rule of interpretation is to ascertain the intent of the agency issuing the regulation so as to effectuate the purpose of the laws. [See Brewer v. Patel (1993) 20 Cal. App. 4th 1017,1021]

Board of Prison Terms "some evidence" standard to parolees in the mental health has got to be in accordance to federal laws and not discriminatory towards the parolee/inmate. Even after the hearing I tried to find help in the appeal. Have multiple appeals that state that no help would be attainable. They are now in the last level of appeal yet if I continue to wait I will have done all the time in the violation. [See In re DeLuna (2005) 126Cal.App. 4th585;In re Rosenkrantz (2002) 29Cal.4th616; In re Scott (2005)133 Cal.App. 4th 573;In re Smith (2003)114 Ca. App. 4th 343; In re Dannenberg, supra, 34 Cal. 4th 1061;126 S Ct 92]

b. Supporting cases, rules, or other authority:

Brown v. Fauver, 819 F.3d 432,397(3d Cir.1987);McBride V. Bureau of Prisons, 9F.3d 503,505(6th Cir.1993);Clemente v. Allen, 120 F.3d 703,705(7th Cir. 1997)U.S. V. Furman, 112 F.3d 435,438-39(10th Cir. 1997);Best v. Kelly, 39 F.3d 328,330(D.C. Cir.1994)

8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes. ☒ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

b. Result _____ c. Date of decision: _____

d. Case number or citation of opinion, if known: _____

e. Issues raised: (1) _____

(2) _____

(3) _____

f. Were you represented by counsel on appeal? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court? ☐ Yes ☐ No. If yes, give the following information:

a. Result _____ b. Date of decision: _____

c. Case number or citation of opinion, if known: _____

d. Issues raised: (1) _____

(2) _____

(3) _____

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

Since I am on the 7th month of this violation (of 12 mo.) and all my appeals are in the 3rd or directors level (4th level) and by the time that this writ (appeal) should be starting it should be over with or I would have done all the time on this violation. It seems futile to continue to wait for the answer. Since some of my appeals like my medical (broken finger) will probably need surgery. The access to court from the 4 yard in R.J.D. for inmates in the mental health program will continue until they change something with the way an inmate can get help in a B.P.T.[H] hearing after a violation with no help. (being an A.D.A. inmate). The record will show what I have gone through to get NO HELP. The other appeals will be self explanatory (an evidentiary hearing or subpoena of my C-file & parole records will prove all the statements that are in this appeal.

b. Did you seek the highest level of administrative review available? ☐ Yes. ☐ No.

Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☒ Yes. If yes, continue with number 13. ☐ No. If no, skip to number 15.

13. a. (1) Name of court: Superior Court of CA. , County of San Diego

(2) Nature of proceeding (for example, "habeas corpus petition"): Habeas corpus

(3) Issues raised: (a) Discrimination , A.D.A.

(b) Jurisdiction , I.A.C.

(4) Result (Attach order or explain why unavailable): Attached Case #HSC10918

(5) Date of decision: July 12 , 2007

b. (1) Name of court: _____

(2) Nature of proceeding: _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (Attach order or explain why unavailable): _____

(5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

16. Are you presently represented by counsel? ☒ Yes. ☒ No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: _____

(SIGNATURE OF PETITIONER)

La Madrid , Diego H.

CDC#: P-98764 Elm Hall #175

P.O. Box 500

Chino , Ca. 91708

La Madrid , Diego H.

Petitioner,

v.

Director of the CDC

Respondent,

CASE NUMBER OF THE

SUPERIOR CT. _____

CASE NUMBER OF THE

APPELLATE CT. _____

PETITION FOR WRIT OF MANDATE

TO: THE HONORABLE PRESIDING JUSTICE

Petitioner respectfully petitions this court for a writ of mandate directed to respondent court, and by this verified petition alleges that:

When "Due Process " is violated combined with guidelines estavlished by the U.S. Suprem Court in Morrissey v. Brewer with no subpoena powers for defendant in foreign country to defend himself, fundamental fairness is the out come in front of a BPT[H] hearing. Jurisdiction is an issue and a "judicial review" of constitutional violtions, ofjudicial enlaargement of laws that are ongoing in BPT

I

Petitioner is the defendant in a criminal action, entitled People of the State of California -Vs- La Madrid , Diego, Case Number P-98764, now pending in respondent court.

II

Respondent is the Ca.dept' of Correctios Court of the State of California, for the County of San Diego.

III

The real party in interest is the People of the State of California.

IV

Respondent has a clear, present, and ministerial duty to abide by and adhere to the exercise of sound discretion, governed by legal rules, to do justice according to the law in conducting hearings, receiving evidence, and to issue rulings consistent with laws governing the subject matter of this petition.

V

Respondent has failed and/or refused to exercise sound discretion as follows:

(a) On or about April 12, 2007, _____, petitioner did present before respondent a motion entitled Marsden motion, juristictional, due process, const. violations, I.A.C.

(b) On or about April 12., _____, 2007, Respondent court has denid all of petitioner's motion, despite facts brought before the court and the state of existing law, both of which support petitioner's request.

VI

Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law other than by this petition, in that there is no other adequate procedure to require respondent to use discretion governed by legal rules to do justice according to law and the Constitution, or to otherwise entitle petitioner to enjoy the benefits sought through this petition.

VII

Petitioner has performed all conditions precedent to the filing of this petition, by having first exhausted all available remedies.

VIII

At all times mentioned herein, respondent has been able to adhere to the and follow the law which governs the within subject matter. Notwithstanding such ability, and despite petitioner's demand(s) as stated herein, respondent continues to fail and/or refuse to order relief petitioner seeks.

IX

Wherefore, petitioner prays:

That this court, on hearing this petition and on consideration of any return filed thereto, issue its peremptory writ commanding respondent to:

That all federal and state laws, rules, Supreme Court laws be followed in this case. That all applicable internal additional rules governing this action be followed . Petitioner to be able to have evidence in my favor allowed .That issues regarding Federal cases " Plata, Armstrong, Coleman, Rutherford, Valdivia, and Gilmore addressed.

VERIFICATION

I am the petitioner in this action. All facts alleged in the above petition, not otherwise supported by citations to the record, exhibits or other documents, are true of my own personal knowledge.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Date:

Respectfully Submitted,

MEMORANDUM OF POINTS AND AUTHORITIES

I

PETITIONER IS ENTITLED TO A WRIT OF MANDATE

California Code of Civil Procedure, §1085 states:

“It may be issued by any court, except a municipal or justice court, to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person.”

California Code of Civil Procedure, § 1086 states:

“The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the party beneficially interested.”

Discretion granted to a court by statute is not an arbitrary discretion to do abstract justice according to the popular meaning of that phrase, but is a discretion governed by legal rules to do justice according to the law and is to be exercised in the light of all attending circumstances.

In exercising its discretion, a court is to be governed by the body of law defining those standards. *People v. Arnold*(1976) 50 Cal. App. 3d Supp. 1. In a legal sense, discretion is abused whenever in the exercise of its discretion the court exceeds the bounds of reason and all of the circumstances before it being considered. *State Farm Inc. Co. v. Superior Court*(1956) 47 Cal. 2d 428, 432, 304 P. 2d 13; *National life of Florida v. Superior Court*(1971) 21 Cal. App 3d 281; *San Diego Whls. Credit v. Superior Court*(1973) 35 Cal. App. 3d 458 *Pacific Indem. Co. V. Superior Court*(1966) 246 Cal. App. 2d 63. Writ of mandate is available to correct abuse of discretion. *Baldwin-Lime-Hamilton v. Superior Court*(1962) 208 Cal. App. 2d 803, 823.

Writ of mandate is the proper remedy in the present case. as there is no appeal petitioner can exercise and/or any appeal available will not allow timely resolution of the

1 controversy presented in this petition. *Winton v. Municipal Court*(1975) 48 Cal. App. 3d
2 228; *Running French Corp. V. Superior Court*(1975) 51 Cal. App. 3d 400; *Phelan v.*
3 *Superior Court*(1950) 35 Cal. 2d 363, *Pettis v. Municipal Court*(1970) 12 Cal. App. 3d
4 1029. The exercise of jurisdiction by a court in a mandate proceeding rests to a
5 considerable extent in the wise discretion of the court. *Wheelright v. Marin County*(1970)
6 2 Cal. 3d 448, appeal dismissed, cert. denied, 404 U.S. 807, 91 S. Ct. 65, 27 L. ED. 2d 37.
7 Thus, a court may deny relief to a petitioner where the person's rights are otherwise
8 protected. *Barthalomne oil Corp. V. Superior Court*(1941) 18 Cal. 2d 726, 730.
9 However, where a petitioner shows compliance with the requirements for the issuance of
10 a peremptory writ, the court has no discretion to exercise and must issue the writ as a
11 matter of right. (Emphasis added). *Flora Crane Service, Inc. V. Ross*(1964) 61 Cal. 2d
12 199, 203; *May v. Board of Directors*(1949) 34 Cal. 2d 125, 133-134. Petitioner has a
13 clear, present, and beneficial right to the performance of the respondent's duty to obey
14 state and federal law. Therefore, this petition is necessary to enforce and protect
15 petitioner's legal rights to be free from arbitrary and illegal action of respondent.
16 *Americal Friends Service Committee v. Procunier*(1973) 33 Cal. App. 3d 252, 256. A
17 writ of mandate is also proper to compel a governmental official to perform a ministerial
18 act. *California Educational Facilities Authority v. Present*(1964) 12 Cal. 2d 593, 598;
19 *Flora Crane Service, Inc. V. Rose*(1964) 61 Cal. 2d 199, 204. Finally, a writ of mandate
20 is proper when the action taken by an official is so palpably unreasonable and arbitrary as
21 to indicate that it has abused its discretion as a matter of law. *Sanders v. Los*
22 *Angeles*(1961) 55 Cal. 2d 626.

23 Petitioner has a beneficial interest as described in the petition, and a writ is
24 necessary to protect the substantial rights of petitioner. As alleged in this petition,
25 substantial damage will be suffered if the writ is denied.
26
27
28

CONCLUSION

For the reasons set forth herein, but not limited thereto, this petition must be granted in order to protect petitioner's rights.

Date:

Respectfully Submitted,

La Madrid , Diego H.

CDC#: P-98764 MIEH175

P.O. Box 500

Chino, CA. 91708

4th DISTRICT COURT OF APPEAL

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

Director of CDC

Plaintiff

-vs-

La Madrid , Diego

Defendant

CASE NO: _____

EX PARTE MOTION FOR
APPOINTMENT OF COUNSEL

TO: THE HONORABLE COURT IN THE ABOVE CAUSE OF ACTION:

NOW COMES, La Madrid , Diego, defendant in the

above cause of action who moves this court for an Ex Parte Order for
Appointment of Counsel to represent defendant's interest in the above
bona fide legal action and for which defendant has no other means to
gain meaningful access to the courts due to incarcerated status of
indigent defendant herein.

This motion is based on this Ex Parte Motion, on the att-
ached declaration, on the memorandum of points and authorities herein,
on the papers and records filed in this matter and on such other
evidence presented to the court in support of this motion.

DATED: 12/6/07

RESPECTFULLY SUBMITTED:

Diego La Madrid

1
2 1. That I am the defendant in the within bona fide legal
3 cause of action, am a poor indigent incarcerated prisoner, and have
4 at risk threatened personal and/or property rights as a result of
5 the within cause of action;

6 2. That declarant is a layperson, untrained in law, and
7 as a result of poor, indigent, and incarcerated status is barred
8 from access to the courts to protect personal and/or property rights
9 as guaranteed by due process and equal protection clauses of both
10 the state and federal constitutions;

11 3. That declarant is forced to represent self in defense
12 of the within suit, is without funds to employ counsel, and has no
13 legal training, experience, access to legal materials and/or access
14 to the courts necessary to adequately and reasonably protect declar-
15 ant's present and future personal and/or property rights;

16 4. That declarant is being harrassed by plaintiff herein
17 in as much as declarant is indigent and incarcerated, unable to
18 retain an attorney, and that without adequate representation and
19 meaningful access to the courts declarant is likely to suffer adverse
20 judgement and therefrom a significant issue of liability would arise
21 impacting declarant's personal and/or property rights both present
22 and in the future;

23 5. That declarant has been incarcerated since MARCH
24 15, ~~20~~ 2007 and will remain incarcerated through
25 approximately MARCH 13, ~~20~~ 2008;

26 6. That as a right guaranteed by the due process and
27 equal protection clauses of the state and federal constitutions
28 declarant has a right to the appointment of legal counsel in the

1 within cause of action based upon: (a) declarant is confronted with
2 a bona fide legal action threatening personal and/or property inter-
3 est, (b) declarant is indigent and in prison, (c) declarant plans
4 to defend from the action herein, and (d) adverse judgement would
5 affect declarant's present and/or future property rights;

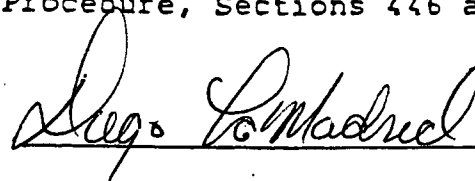
6 7. That declarant is entitled to the appointment of coun-
7 sel and declarant does declare that such appointed counsel should
8 be awarded legal fees in accordance with standards within the com-
9 munity for similar cases;

10 8. That attorney fees should be ordered by this court to
11 be paid pursuant to, but not limited to, (a) Business and Professions
12 Code, Section 6210, (b) Government Code, Section 27706, and/or (c)
13 legal duty and obligation of law enforcement/correctional agency
14 to provide for the constitutionally mandated needs of wards remanded
15 to custody;

16 9. That without relief requested herein that declarant
17 will continue to suffer deprivations of constitutional and/or other
18 legal rights as stated above.

19 VERIFICATION

20 I have read the above statements and do declare upon
21 penalty of perjury that these statements are true and correct as
22 based upon information and belief. Executed this 6 day of
23 DECEMBER, 2007 at C. I. M.,
24 California pursuant to Code of Civil Procedure, Sections 446 and
25 2015.5.

26 
27
28

DECLARANT

POINTS AND AUTHORITIES

I

INDIGENT PRISONER WHO FACES BONA FIDE LEGAL ACTION THREATENING INTEREST IS ENTITLED TO ACCESS TO COURTS AS GUARANTEED BY DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE CONSTITUTIONS OF CALIFORNIA AND THE UNITED STATES. Yarbrough v. Superior Court, (1985) 39 C.3d 197; Payne v. Superior Court, (1976) 17 C.3d 908.

It is uncontrovertible that defendant herein is imprisoned, is indigent without funds to employ counsel, and faces a bona fide legal action threatening personal and/or property interest by virtue of having to defend from this suit. Further, defendant is acting Pro Per in own defense without adequate training or experience, is without adequate access to legal materials, and is without meaningful and/or viable access to the courts. Woods v. Superior Court, (1974) 36 CA3d 811, Yarbrough v. Superior Court, (supra) 39 c.3d 197.

II

INDIGENT PRISONER WHO IS UNTRAINED AND/OR INEXPERIENCED IN CIVIL LAW SHOULD BE APPOINTED COUNSEL. Payne v. Superior Court, (supra) 17 c.3d 908.

In light of this bona fide legal action threatening defendant's personal and/or property rights, the court must appoint legal counsel in the instant case. Yarbrough v. Superior Court, (supra) 39 C.3d 197, 204.

Before denial of defendant's motion this court must at minimum hold a hearing and/or make factual determination using guidelines set down by the California Supreme Court in Payne. Payne v. Superior Court, (supra) 17 c.3d 908, 924; Yarbrough v. Superior Court, (supra) 39 c.3d 197, 203-204, 207.

/////

III

THE DECISIONS OF THE SUPREME COURT AND COURT OF APPEAL ARE BINDING AND MUST BE ACCEPTED BY THE TRIAL COURTS. Woods v. Superior Court, (supra) 36 C. 3d 811, 814; Auto Equity Sales, Inc. v. Superior Court, () 57 C.2d 450, 455.

The rule of stare decisis is a rule of jurisdiction.

Auto Equity Sales, Inc. v. Superior Court, (supra), citing Abelleri v. District Court of Appeal, () 17 C.2d 280, 288.

IV

ATTORNEYS FEES SHOULD BE ORDERED PAID BY THIS COURT. 6th, 13th, and 14th Amendments to the United States Constitution.

It stands to reason that if defendant is entitled to court appointed counsel, that such counsel is entitled to adequate and reasonable compensation equal to that afforded others in the community for similar services. 13th and 14th Amendments to United States constitution; Yarbrough v. Superior Court, (supra) 39 C.3d 197, desent at 207 and continuing be Chief Justice Bird.

This court should order funds be provided from appropriate sources including, but not limited to, provisions pursuant to Business and Professions Code, Section 6210; Government Code, Section 27706; from the law enforcement/correctional agency of custody which is legal mandated to provide for constitutionally required needs of defendant just as food, clothing, shelter, medical and other needs must be provided for. Defendant's legal needs are simply an extension of other constitutionally protected rights which serves both the needs of the individual and society at large. Indeed, for the state to allow personal and/or property rights to be violated, which in this case could have far reaching impact on defendant's future earning and family ties, would transgress the

1 constitution. Under circumstances as presented herein surely the
2 state should afford defendant the protection afforded in criminal
3 proceedings leading to incarceration or the in prison repair of an
4 ingrown hangnail, contact visitation, mail censorship, or religious
5 practice.

6
7 V

8 LEGAL PAPERS SUBMITTED BY INDIGENT PRO PER
9 PRISONER UNTRAINED IN LAW MUST BE HELD TO
10 LESS STRIDENT STANDARDS THEN THOSE DRAFTED
11 BY MEMBERS OF THE BAR AND MUST BE VIEWED IN
12 LIGHT MOST FAVORABLE TO PRO PER. Haines v.
13 Kerner, (1972) 404 U.S. 519; 92 s. Ct. 594.

14
15 CONCLUSION

16 Defendant to this suit is an indigent prisoner who is
17 untrained in law and being denied meaningful access to the courts.
18 Defendant has a constitutional right to meaningful access to the
19 courts and to appointment of legal counsel to protect personal
20 and/or property rights which are threatened by this bona fide legal
21 action. Defendant further enjoys the right to have legal counsel
22 compensated by whatever means ordered by this court.

23
24 PRAYER

25 WHEREFORE, Good Cause having been shown, this court should
26 grant the motion as follows:

- 27 1. declare defendant's rights as to issues raised herein;
- 28 2. order appointment of counsel to defend defendant in
the above cause of action;
3. order the payment of counsel appointed herein a sum
customary for such a case within the community to be paid from a
source determined by the court;
4. in the alternative, hold hearing(s) and/or otherwise

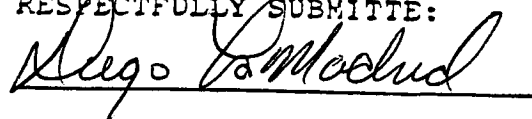
1 make findings of fact as to issues pertaining to appointment and
2 compensation of counsel to defend defendant in this suit;

3 5. order that all records pertaining to this motion be
4 sealed subject to inspection only upon order of this court after a
5 showing of good cause;

6 6. order such other and further relief as is just, pro-
7 per and equitable.

8 DATED: 12/6/07

RESPECTFULLY SUBMITTED:



DEFENDANT
IN PRO PER

**CALIFORNIA INSTITUTION FOR MEN
PROOF OF SERVICE BY MAIL**

(C.C.P. §1013a; §2015.5; Fed.R.Civ.P. 5; 28 U.S.C. 1746)

I am over the age of eighteen years, a citizen of the United States, a resident of the State of California, (A) and/ and not a party to the within action. My mailing address is: P.O. BOX 600, CHINO, CA 91708-0600.

On the following date: (B) Dec. 19, 2007, I served the following document(s): (C)

42 U.S.C. 1983

On the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, addressed as follows to the following parties: (D)

U.S. DISTRICT COURT

SOUTHERN

860 FRONT ST. RM 4290

S.D. CA 92101 - 8900

I am readily familiar with the normal business practices for collection and processing of correspondence and other materials for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, in a sealed envelope with postage fully prepaid, it is deposited in a box so provided at the correctional institution in which I am presently confined.

I certify (or declare) under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(E) Name: Diego LaMadrid CDCR#: P. 98764

Signed: Diego LaMadrid Dated: 12/19/07

CIM MAILROOM ACKNOWLEDGEMENT OF MAILING

DATED: 12/20/07 STAFF: _____

SIGNED: [Signature]

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by local court rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of identifying the case for filing. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Diego H. La Madrid

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Bernardino
(EXCEPT IN U.S. PLAINTIFF CASES)

225	DEFENDANTS	1983
FILING FEE PAID		
Yes	No	
HFP MOTION FILED		
Yes	No	
CONSENT TO		
COURT ORDERED		

CDC, et al **FILED**
DEC 26 2007
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) COURT ORDERED

Diego H. La Madrid
PO Box 500
Chino, CA 91708
P-98764

'07 CV 2434 JM NLS

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | |
|----------------------------|----------------------------|---|----------------------------|----------------------------|
| PT | DEF | | PT | DEF |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. 1983

V. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	PERSONAL PROPERTY	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSL (405(p))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Real Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 791 Empl. Ret. Inc.	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> Security Act		<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input checked="" type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property					

VI. ORIGIN (PLACE AN x IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE 12/26/2007

SIGNATURE OF ATTORNEY OF RECORD

[Signature]